IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 477 of 2004
With
CIVIL APPLICATION No. 1472 of 2004
In
FIRST APPEAL No. 477 of 2004
With
FIRST APPEAL No. 478 of 2004
With
CIVIL APPLICATION No. 1473 of 2004
In
FIRST APPEAL No. 478 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMKISHAN GURU RAGHUNATHDASJI - Appellant(s)

Versus

RAMAVTAR BANSRAJ SINGH - Defendant(s)

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Appearance :
MR DHAVAL D VYAS for Appellant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 28/09/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Admit. Mr. S.M. Shah, learned counsel waives service of process of admission on behalf of the respondent in each of the appeal.

1. These appeals have been filed against the judgment dated 5th September, 2003 and decree dated 10th October, 2003. Though number of the arguments have been raised in support of the appeals, it was also submitted that in light of the judgment of the Supreme Court in the matter of **Kanhaiyalal and others Vs. Anupkumar and others, reported in (2003) 1 Supreme Court Cases 430**, the judgment deserves to be set aside. It was submitted that the learned Judge started hearing the arguments of the parties in the year 1999, concluded the hearing on 7th February, 2001 and thereafter issued some notice to third parties and thereafter again closed the matter for judgment under its proceeding dated 30.8.2001, but delivered the judgment on 5th September, 2003 and as such, the judgment under appeals deserves to be set aside. Learned counsel for the respondent, firstly submitted that looking to the valuation of the matters, the

matters are to be heard by the learned Single Judge, but when Mr. Vyas, learned counsel for the appellant submitted that in accordance with the directions of the learned Single Judge the matter has been placed for hearing before this Court, then, after going through the proceeding dated 12.3.2004, which was recorded in the presence of Mr. Suresh M. Shah, learned counsel for the respondent, Mr. Shah submitted that what he wanted to say was “that though the matters are to be heard by a learned Single Judge, but the Division bench can always exercise jurisdiction in such matters.” We are surprised to hear all this. When the matter is to be heard by a learned Single Judge, then, it must be heard by the learned Single Judge and it cannot be heard by a Division Bench, because right of appeal would be adversely affected. [This is only subject to Rule 5 of the Gujarat High Court Rules, 1993 where the said Rule provides that “a Single Judge may refer any matter before him or question arising in such matter to a division bench of two Judges, or a larger bench”.] In this case the learned single Judge, in the presence of the counsel for the respondent observed that “since valuation of the subject matter exceeds Rs. 1.00 lac, appeals will have to be placed before a Division Bench”, then, there is no scope to

say that the Division Bench can exercise jurisdiction in a matter which is to be heard by a learned Single Judge. We are sorry to record that the learned counsel for the respondent no. 1 was trying to take us for a ride.

2. On facts, there is no dispute that the arguments were heard on 7th February, 2001, the matter was fixed for judgment and thereafter, some notice was issued in view of the death of some learned advocate. Records do not show that after the vakalatnama was filed on behalf of the legal representatives of the deceased – third party, parties were again heard. The facts remain that the hearing concluded on 7th February, 2001 and the judgment has been delivered on 5th September, 2003. In the matter of Kanhaiyalal (supra), High Court had heard the matter in November, 1990 and pronounced the judgment on 7.5.'93, that is, after two years and six months and the said judgment was set aside by the Supreme Court, observing that it would not be proper for a court to sit tied over the matter for such long period. In view of the said judgment of the Supreme Court, we must also set aside the judgment under appeals.

3. Order XX Rule 1 of Code of Civil Procedure provides

that when the judgments are to be pronounced after the case has been heard, the Judge shall pronounce the judgment in the open court either at once or as soon as thereafter as may be practical and when the judgment is to be pronounced on some future day, the court is obliged to fix such date. Rule 1 further provides that if the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded and if that is also not possible, then the learned Judge is required to record the reasons for such delay. In the present matters, it appears that the learned Judge issued notice after concluding the hearing on 7th February, 2001, but securing attendance, he did not afford any opportunity of hearing to the parties and relied upon his memory for delivering judgment. We must remind the learned court below that the justice should not only be done, but it should appear to have been done. Where a judgment is delivered after two years or more, public at large would have reasons to say bad about the court and the Judges. In a case like present, after securing attendance of the parties, learned court below ought to have given proper opportunity of hearing to the parties.

4. For the reasons aforesaid and in view of the judgment of the Apex Court, we set aside the judgment and decree under appeal and remand the matters to the trial court for their disposal in accordance with law. The parties present in the Court shall appear before the learned court below on 17th October, 2005. The learned trial court shall give proper opportunity of hearing to the parties and shall decide the matters in accordance with law keeping in view the observations made aforesaid. For the guidance of the learned trial court, we make it clear that we are not dealing with the matters on merits, but are setting aside the judgment on a technical ground. Both the appeals are allowed. Civil Applications stand disposed of. No order as to costs. Decrees be framed accordingly. Records and proceedings which have been received in this Court be immediately sent back along with copy of the judgment.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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